APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/241,857	02/02/1999	VLADIMIR POGREBINSKY	P-2163-US	9235

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WELSH & FLAXMAN LLC
2000 DUKE STREET, SUITE 100
ALEXANDRIA, VA 22314

EXAMINER
RYMAN, DANIEL J

ART UNIT	PAPER NUMBER
2665	

DATE MAILED: 08/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/241,857	POGREBINSKY, VLADIMIR
	Examiner	Art Unit	
	Daniel J. Ryman	2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _22 March 2005_.
2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-4,6 and 8-35_ is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) _1-4,6,8-20 and 29-35_ is/are rejected.
7) ☒ Claim(s) _1,19 and 21-28_ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All   b) ☐ Some * c) ☐ None of:
      1. ☐ Certified copies of the priority documents have been received.
      2. ☐ Certified copies of the priority documents have been received in Application No. _____.
      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
         application from the International Bureau (PCT Rule 17.2(a)).
   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1.   The indicated allowability of claims 1-4, 6, 8-20, and 29-35 is withdrawn in view of the newly discovered reference(s) to Shaffer et al. (USPN 6,370,163) and Phillips et al. (USPN 5,490,168). Rejections based on the newly cited reference(s) follow.

Claim Objections

2.   Claim 1 is objected to because of the following informalities: in line 8, "sampling at least one media sample into a packet" should be "sampling to obtain at least one media sample and placing said media sample into a packet". Appropriate correction is required.

3.   Claim 19 is objected to because of the following informalities: in line 3, "a video for providing video frames" should be "a video compression for providing video frames". Appropriate correction is required.

4.   Claim 22 is objected to because of the following informalities: in line 2, "results a packet loss" should be "results in packet loss". Appropriate correction is required.

Claim Rejections - 35 USC § 102

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6.   Claims 1-4, 8-10, 12, 14, 15, 17, 20, 29-31, 33, and 34 are rejected under 35 U.S.C. 102(e) as being anticipated by Shaffer et al. (USPN 6,370,163).

7.   Regarding claims 1, 12, 17, 20, 29, and 31, Shaffer discloses a method and apparatus for transmitting packets over a packet switch network (internet) which includes a plurality of multimedia transceivers for sending and receiving multimedia communications, the method comprising the steps of and the apparatus comprising means for: providing at least two predefined network states (short/long end-to-end delays) for comparing with a monitored network state (col. 2, lines 15-63); monitoring said network state (col. 2, lines 15-63); selecting one state of the at least two predefined network states in accordance with said monitored network state (col. 2, lines 15-63); sampling to obtain at least one media sample (col. 1, lines 41-48); creating at least one packet by placing at least one media sample and at least one network protocol parameter (fields of header of IP packet) into a package in accordance with said selected network quality state (col. 2, lines 15-63); and transmitting said packet over said network, wherein the number of media samples in a packet is in accordance with said selected predefined network state (col. 2, lines 15-63).

8.   Regarding claim 2, Shaffer discloses that said at least one media sample includes a plurality of media samples, and said plurality of media samples are arranged in at least one frame within said packet (col. 1, lines 41-48 and col. 2, lines 15-63).

9.   Regarding claim 3, Shaffer discloses that said packaging step includes packaging said at least one media sample in accordance with the media quality of the receiving transceiver (delay of received media samples) (col. 2, lines 15-63).

10.   Regarding claim 4, Shaffer discloses that said packaging step includes packaging said at least one frame into said packet with a first network protocol parameter (fields of header of IP packet) (col. 2, lines 15-63).

11.   Regarding claim 8, Shaffer discloses that said step of providing two predefined network states includes the steps of analyzing said network in accordance with a received audio communication (col. 2, lines 15-63); categorizing said network into at least two states upon analyzing said network, said at least two states corresponding to said at least two predefined network states (col. 2, lines 15-63); and packaging at least one media frame according to each of said at least two predefined network states (col. 2, lines 15-63).

12.   Regarding claim 9, Shaffer discloses that the step of monitoring comprises the steps of: transmitting a test packet between a first transceiver and a second transceiver (col. 2, lines 15-63); and measuring at least one network parameter (end-to-end delay) for determining said network state at said first transceiver (col. 2, lines 15-63).

13.   Regarding claim 10, Shaffer discloses that said at least one network parameter is a period of time for said test packet to travel from the first transceiver to said second transceiver and back to said first transceiver (col. 2, lines 15-63).

14.   Regarding claims 14 and 33, Shaffer discloses an allocator operably coupled to said monitoring means for receiving said network state (means for calculating the determined packet size) (col. 2, lines 15-63); and at least one media bit rate controller for controlling transmission speed and said network load in accordance with said detected network state (col. 2, lines 15-63 and col. 7, lines 46-67).

15.   Regarding claims 15 and 34, Shaffer discloses that said at least one media bit rate controller is an audio bit rate controller (col. 2, line 64-col. 3, line 10).

16.   Regarding claim 30, Shaffer discloses that said step of adjusting bit rate includes the step

of increasing bit rate for transmission with increased quality upon detection of increased

available bandwidth (col. 7, lines 46-67).

Claim Rejections - 35 USC § 103

17.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

18.   Claims 6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer

et al. (USPN 6,370,163) in view of Phillips et al. (USPN 5,490,168).

19.   Regarding claim 6, Shaffer does not expressly disclose that said at least one frame

includes at least two frames, said at least two frames including at least one frame and at least one

redundant frame and said packaging step includes packaging said at least two frames into said

packet with a second network protocol parameter. However, Shaffer does disclose including

multiple samples in a packet in addition to a network protocol parameter (fields in the header of

an IP packet) (col. 2, lines 15-63). Phillips teaches, in a system for optimization of data

throughput using variable packet length, using redundancy in order to decrease the number of

errors in the packet (col. 1, lines 39-44 and col. 1, line 65-col. 2, line 15). Thus, it would have

been obvious to one of ordinary skill in the art at the time of the invention to have the at least one

frame include at least two frames, said at least two frames including at least one frame and at

least one redundant frame and said packaging step includes packaging said at least two frames

into said packet with a second network protocol parameter in order to decrease the number of

errors in the packet.

20.   Regarding claim 11, Shaffer does not expressly disclose that said at least one network

parameter is a count of packets lost in the transmission from first transceiver to the second

transceiver and back to said first transceiver. Phillips teaches, in a system for optimization of

data throughput using variable packet length, using the count of packets lost in the transmission

from first transceiver to the second transceiver and back to said first transceiver in order to

optimize data throughput (col. 1, lines 39-44 and col. 2, lines 12-25). Thus, it would have been

obvious to one of ordinary skill in the art at the time of the invention to use the count of packets

lost in the transmission from first transceiver to the second transceiver and back to said first

transceiver in order to optimize data throughput

21.   Claims 13, 16, 18, 19, 32, and 35 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Shaffer et al. (USPN 6,370,163).

22.   Regarding claims 13, 18, and 32, Shaffer discloses in the primary embodiment that the

sampling means comprises: an audio sampling device (col. 1, lines 41-48 and col. 2, line 64-col.

3, line 10). Shaffer does not expressly disclose that the sampling means also comprises a video

sampling device. However, Shaffer further discloses transmitting video packets (col. 1, lines 37-

40) and sampling audio data in order to turn it into packets (col. 1, lines 41-48). Therefore it

would have been obvious to one of ordinary skill in the art at the time of the invention to have

the sampling means also comprise a video sampling device in order to convert video data into

video packets.

23.   Regarding claims 16 and 35, Shaffer does not expressly disclose that said at least one
media bit rate controller is a video bit rate controller. However, Shaffer further discloses that
delay affects voice and video transmission over IP networks (col. 1, lines 37-40). Shaffer further
discloses how to compensate for delay in packet transmitted over an IP network (col. 2, lines 18-
63). Thus, it would have been obvious to one of ordinary skill in the art at the time of the
invention to have the at least one media bit rate controller be a video bit rate controller in order
to compensate for delay when transmitting video.

24.   Regarding claim 19, Shaffer discloses that compressing means comprise: an audio
compression for providing audio frames in order to transmit the audio data in the IP network
(col. 1, lines 41-48). Shaffer discloses that does not expressly disclose that compressing means
comprise: a video compression for providing video frames. However, Shaffer further discloses
transmitting video and audio signals in data packets (col. 1, lines 37-40). Shaffer also discloses
compressing and packetizing audio samples in order to convert the samples into packets (col. 1,
lines 41-48). Therefore, it would have been obvious to one of ordinary skill in the art at the time
of the invention to have compressing means comprise: a video compression for providing video
frames in order to transmit the video signals in an IP network.

Allowable Subject Matter

25.   Claims 21-28 are objected to as being dependent upon a rejected base claim, but would
be allowable if rewritten in independent form including all of the limitations of the base claim
and any intervening claims. While the prior art discloses a plurality of network states, the prior
art does not disclose or fairly suggest selecting the network quality states from the group
consisting of: not sufficient quality; sufficient quality; and high quality.

Conclusion

26.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pauls et al. (USPN 6,920,150) see entire document which pertains to adaptive communications transcoding and error control. Vargo et al. (USPN 6,356,545) see entire document which pertains to a dynamically varying codec.
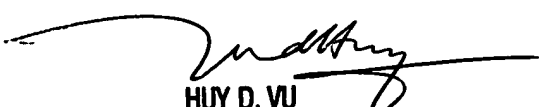
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Ryman whose telephone number is (571)272-3152. The examiner can normally be reached on Mon.-Fri. 7:00-4:30 with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571)272-3155. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

<div style="text-align:right">

Daniel J. Ryman
Examiner
Art Unit 2665

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HUY D. VU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600